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No. 95-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

MIKE GRAVEL,

Petitioner,

v.

CHRISTINE O. GREGOIRE,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

PETITION FOR A WRIT OF CERTIORARI

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72 pp

QUESTION PRESENTED

In the decision below, the Supreme Court of the State of Washington declined to allow the citizens of that state the opportunity to vote on the so-called "Philadelphia II" initiative advanced by the proponents, who are Petitioners here. In a nutshell, the Philadelphia II initiative seeks to facilitate the creation, as a matter of federal law, of a national initiative procedure to address issues of governance. The Supreme Court of the State of Washington viewed the case as presenting only issues regarding the state's laws with respect to elections and initiatives, and it failed to address important federal constitutional questions inherent in any state effort to deny citizens the opportunity to vote on the fundamental governance question at issue in this case. The question presented for review is thus the following:

May a state, consistent with Article I, Section 2 and the First, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution, as well as the "We, the People" Preamble to that Constitution, deny the voters of that state the opportunity to vote on a measure which allowed its citizens to decide matters of self-governance as law in both their capacities as State and Federal citizens in the same measure?

LIST OF PARTIES

The parties to this proceeding were also parties to the proceeding in the Supreme Court of the State of Washington.

The Petitioners were Philadelphia II, a non-profit corporation; Robert D. Adkins; an individual; Mike Gravel, an individual.

The Respondent/Appellant was Christine O. Gregoire, Attorney General of the State of Washington.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

No: 96-_____

PHILADELPHIA II, ET AL.,

Petitioners,

v.

CHRISTINE O. GREGOIRE,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court State of Washington

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Mike Gravel, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court for the State of Washington, on 'Philadelphia II, et al., Petitioners, v. Christine O. Gregoire, Appellant, No. 62663-4 entered on February 29, 1996.

DECISIONS BELOW

The decision of the Supreme Court of the State of Washington is reported as Philadelphia II v. Gregoire, 128 Wn.2nd 693 (1996) and is reproduced in Appendix A, at pages 1a through 13a. The decision of the Superior Court of the State of Washington for Thurston County is unreported and is reproduced in Appendix B at pages 14a and 15a.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of the State of Washington was entered on February 29, 1996. No rehearing petition was filed. A timely request for extension of time to file this brief was made on May 13, 1996 pursuant to Rule 30 of the Supreme Court of the United States. On May 17, 1996, Justice Sandra Day O'Connor extended the time for filing this petition to and including June 28, 1996. This Court thus has jurisdiction pursuant to 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

On January 9, 1995, petitioners filed an initiative in accordance with Washington State RCW 29.79.010 with the Secretary of State. The proposed measure was called 'Philadelphia II." Appendix C, pages 16a through 40a.

Philadelphia II was a proposed state law, which, if enacted, would have added technologically up-to-date, functional, procedures of improved effectiveness as an alternative or as an adjunct to existing state initiative procedures.

In the national venue, Philadelphia II proposed to facilitate the enactment of a federal law which would result in a national initiative procedure applicable in every governmental jurisdiction of the United States. To facilitate this purpose, the proposal specified the establishment of a state agency. The extra-state function amongst several other state functions of the agency was to inform and advise citizens of other states with respect to their inherent right, constitutionally guaranteed, to exercise, on a voluntary basis, their constituent voting power to enact the Philadelphia II measure as a law of their state. Further, if the officials of any state were to refuse to accede to a call by the citizens of that state for a state-wide ballot on Philadelphia II, the Washington agency would be authorized to see that a voluntary constituent vote on Philadelphia II be conducted.

The premise relative to Philadelphia II is that if fifty one percent of the registered voters voting in the United

States vote to enact Philadelphia II, on a state by state basis as an exercise of their voluntary constituent power, the enacted measure would be a federal law.

In the event the citizens of the United States enacted Philadelphia II as a federal law and a sufficient number of voters in other nations implemented a corresponding law, a national call to a world meeting to address issues of global governance would be issued.

After being approved as to form, and designated, "WS Initiative 641—Philadelphia II," the document was transmitted to the Attorney General on January 19, 1995, for issuance of a ballot title and summary in accord with RCW 29.79.040.

On January 26, 1995, the Attorney General transmitted to the Secretary of State a letter in which she declined to supply a title to WS Initiative 641 "for the reason that the contents of the measure are beyond the legislative power reserved to the people under the Washington constitution." Appendix D, pages 41a through 44a.

On February 3, 1995, Robert B. Adkins and Mike Gravel, on behalf of Philadelphia II, filed an appeal with the Superior Court of the State of Washington for Thurston County pursuant to RCW 29.79.060, requesting that the Court decide upon and file a ballot title or, in the alternative, grant an order mandating that the Attorney General formulate a ballot title for Philadelphia II Initiative 641.

On February 8, 1995, Petitioners filed a Memorandum in Support of their appeal raising the issue that the Attorney General's refusal to perform her ministerial duties abridges the rights and powers of the Washington citizens under the Constitution of the State of Washington and under the Constitution of the United States.

On February 9, 1995, the Attorney General filed a response to Petitioners' appeal and a Memorandum in Support.

On February 13, 1995, the Superior Court of the State of Washington for the County of Thurston heard oral arguments. on the appeal. It affirmed the actions of the

Attorney General and dismissed the case. Appendix B, pages 14a and 15a.

On February 27, 1995, Robert B. Adkins and Mike Gravel, on behalf of Philadelphia II, filed pro se a Notice of Appeal with the Supreme Court of the State of Washington.

On March 14, 1995, Petitioners filed a Statement of Grounds for direct review.

On March 23, 1995, the Attorney General filed a Response joining in a request for review by the Supreme Court of the State of Washington.

On April 14, 1995, the Supreme Court stated it would make a decision to review after the submission of briefs and, subsequently, agreed to hear the case.

On June 6, 1995, Petitioners filed their Brief with the Supreme Court of the State of Washington.

On July 5, 1995, Respondent filed Respondent's Brief.

On August 5, 1995, Petitioners filed a Reply Brief.

On October 27, 1995, the Supreme Court sitting En Banc heard oral arguments.

On February 29, 1996, the Supreme Court of the State of Washington affirmed the judgment of the Superior Court in its determination "that the initiative is beyond the scope of Washington's initiative power." In its opinion, however, the Court confirmed Petitioners' position that the Attorney General should have issued a ballot title and summary in compliance with her ministerial duties. Appendix A, pages 1a through 13a.

REASONS FOR GRANTING THE WRIT

I. Introduction

The People's right to vote on matters of public policy directly was first formalized in state laws in South Dakota in 1898. Since then, twenty-four states have enacted initiative procedures. These procedures are merely conveniences to the

People who with their use exercise their most fundamental sovereign legislative powers of human governance. Powers that are absolutely protected by the Constitution of the United States.

Many State Governments, in their Legislative, Executive and Judicial Departments, on various arbitrary and capricious pretexts have withheld the use of initiative procedures as a matter of course.[1] These violations of the People's sovereignty have occasioned during this entire century substantial litigation imposing great costs on the American judicial system. The issue is far from resolved in that a substantial portion of the judiciary still find it acceptable to limit the legislative powers of the People in violation of the U.S. Constitution.

The decision[2] of the Supreme Court of the State of Washington in Philadelphia II v. Gregoire is the latest

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[1] The following gives some indication of the level of judicial conflict that rages over this all important and fundamental constitutional issue: Anonymous, Limitations on Initiative and Referendum, Stanford Law Review, Vol. 3, 497, April 1951; Donald S. Greenberg, The Scope of the Initiative and Referendum in California, California Law Review, Vol. 54, 1717, 1966; Philip A. Trautman, Initiative and Referendum in Washington: A Survey, Washington Law Review, Vol. 49, 55 1973; Barbara F. Grossman, The Initiative and Referendum Process: The Michigan Experience, Wayne Law Review, Vol. 28, 77, 1981; Melissa Collins, Judicial Intervention in the Pre-election Stage of the Initiative Process: A Change of Policy by the California Court, Pacific Law Journal, Vol. 15, 1984; Michael J. Farrell, Judiciary and Popular Democracy: Should Courts Review Ballot Measures Prior to Elections?, Fordham Law Review, Vol. 53, 1985; James D. Gordon III and David B. Magleby, Pre-Election Judicial Review of Initiatives and Referendums, Notre Dame Law Review, Vol. 64 No. 1, 1989; and Stan P. Geurin, Pre-Election Judicial Review: The Right Choice, Oklahoma City University Law Review, Vol. 17 No. 1 Spring 1992.

[2] Had this state decision been rendered in 1787-88, its effect would have denied the people the use of a state-facilitated convention to ratify the U.S. Constitution. It is reasonable to conjecture that such actions by state governments at that time would have aborted the nation. But reflection on this historical parallel does underscore the colossal arrogance of the Washington State Government in denying its citizens the use of state

example of this controversy. The result will be that an untold number of Americans will see their constitutional rights and powers abridged. This issue has percolated for a century, at great cost to the respect held for the government, specifically the judiciary, by the People. The cost in terms of political moral and the monetary expense incurred by both the People, seeking the enforcement of constitution guarantees, and the government is wasteful.

This matter is ripe for decision. The extensive constitutional damage of the Washington opinion can be forestalled by this Court granting a Writ of Certiorari. In so doing, this Court can make itself privy to the briefs and arguments of the parties on this all important issue, and thereupon decide, giving guidance to all in the polity of America.

The first and last national initiative process conducted in this nation was the ratification of the United States Constitution. The Framers of that document drafted a self-actuating initiative that established a new government. They wanted the People, not governments, to ratify the Constitution[3] in the only practicable manner of the day—ratification conventions, with delegates selected by the people for that purpose alone. The Framers asked for and the States acquiesced in facilitation of the ministerial tasks for delegate selection and the convening of conventions. The whole process was recognition of the inalienable source of all political power—the People.

Philadelphia II was so named[4] in order to evoke that process as a precedent. The first national initiative called

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ministerial procedures to legislatively address a matter of deep national concern. Their decision was primarily based on the earlier Ford Case.

[3] Letter, James Madison to George Washington, New York, September 30, 1787, Debates on the Constitution, Part One, The Library of America, 1993, at 42.

[4] The sponsoring organization and the proposal for enactment were both called Philadelphia II when the instant case came into being. Since then, in an effort to dispel confusion and more accurately reflect the respective activities in question, the proposed law has been renamed the "United States Initiative" while the sponsor, a California non-profit C-4 corporation, retains the name "Philadelphia II."

upon the People to enact our Constitution. Philadelphia II now calls upon voting Americans to enact a federal law that will put in place initiative procedures which will enable "We, the People," to exercise our inherent legislative powers of self-government in every governmental jurisdiction of the United States. We will have created legislatures of, for, and by the People to act in partnership with our elected representatives. The Congress, the (state) legislatures, the Boards and Councils of local governments will be joined by the People as legislative electorate—the "Initiative."

This Court has repeatedly recognized and affirmed the legislative powers of the People in such cases as Luther v. Borden, 7 Howard, I, (1848), Phillips v. Payne, 92 U.S. 130 (1875), and Reitman v. Mulkey 387 U.S. 369 (1967). The first, affirmed the People's power to create a constitution in Rhode Island in 1842. The second, confirmed the People's power in Alexandria County to vote by referendum to return to Virginia in 1847. In Reitman this Court rightfully overturned a measure enacted by the People of California and in so doing confirmed, as it has before, the sovereign exercise of the People's legislative powers.

The historic antecedents of the modern initiative are found in the exercise of the legislative powers of individuals acting as a group—a unified constituency—as exemplified in the Mayflower Compact; the New England Town Meeting; the Continental Congresses from 1774 to 1783; the various state conventions of that same period, which gave birth to state constitutions; and the ratification process of our Constitution of 1787 to 1790. These examples of "constituent power," when either a government was not in existence or when the existing government failed to cooperate, consistently had two elements in common: 1) all aspects of the process were voluntary and 2) the procedures for presenting proposed measures for decision to citizens directly or to representatives of political constituencies were validated in and by the act of decision itself on the measure presented. Voting on expressions of will—group-level policy—or on laws no less than on a constitution is an exercise of "constituent power" in that it involves voluntary decisions by citizens to participate in collective self-governance. Our political system rests on this foundation—the voluntary exercise of "constituent power" to vote rather than to have to

revolt. Our Framers viewed the exercise of "constituent power", without the convenience of legally formulated legislative procedures, as recourse to "First Principles," as illustrated by James Madison:

> The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the Bills of rights, that first principles might be resorted to.[5]

The difficulty, painfully obvious to the electorate in modern society, of exercising our "constituent power" by voting without fair and equitable procedures could be dealt with at great length. It is obviously impractical and wasteful to convene, independent of government, de novo assemblages of constituents through initiatives to deal with public policies whenever issues capture the public's attention.

The sponsors of Philadelphia II posit that the success of human governance rests less on the wisdom of government leaders and more on the civic maturity of free people. Maturity is gained by the daily shouldering of personal, and in this instance civic, responsibilities. A shortcoming of our representative system is that it denies the People the opportunity to assume full responsibility for self-government.

Philadelphia II seeks to awaken the People to their right and obligation to exercise their rights and powers under both the State and Federal Constitutions to enact initiative procedures as state law and then as federal law, thereby melding the best of representative government and the best of

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[5] Elliots's Debates, Vol. III, Debates in the Federal Convention of 1787 as reported by James Madison, at 534. A current view of "first principles" is offered by Akhil Reed Amar, Philadelphia Revisited: Amending the Constitution Outside Article V, The University of Chicago Law Review, Vol. 55, No. 4, Fall 1988, at 1050. "What are these "first principles"? Simply that the People were sovereign, and that a majority of them enjoyed the inalienable right—that is, a right that they were incapable of waiving, even if they tried—to alter or abolish their form of government whenever they pleased. These principles represent the essence of the American Revolution."

the People with their new-found civic maturity. Unfortunately, the experience of this century demonstrates that there is little likelihood that government office holders will permit much less put in place procedures that will make possible the full, fair, and direct exercise of the People's legislative powers. The Washington State experience in Philadelphia II v. Gregoire is but one example.

The Philadelphia II initiative was an attempt by citizens of Washington, as state citizens, to improve upon state initiative procedures and, concurrently as federal citizens, to set up an interim state agency with funding to subsequently assist citizens in other states to hold voluntary constituent elections by a "bootstrap process," enabling other American voters to also act in their capacity as federal citizens. The denial by the Washington State Government of the use of state initiative procedures by its citizens makes a sham of our "first principles."

This Court has yet to review a case offering sufficient focus on initiative procedure to permit it to dispel the confusion that surrounds the People's use of the initiative as a tool for the exercise of their legislative power and. more importantly, their "constituent power." Philadelphia II v. Gregoire brings focus to the issue—the right of the People in this generation to assent or to withdraw assent on the form of government they want, by exercising through initiative their power to vote rather than revolt—is one of, if not, the most important constitutional questions to come before this Court since the beginning of the Great American Experiment. Hopefully this Court will grant a Writ for Certiorari

II. The Government of Washington State negated the sovereignty of its own creator, the People of Washington State.

The Attorney General of Washington State denied a title to Initiative Measure 641, Philadelphia II, because "the contents of the measure are beyond the legislative power reserved to the people under the Washington State Constitution."[6] In a related footnote the Attorney General confesses that:

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[6] See Appendix D at 1.

> We are also unaware of any credible legal authority for the proposition (expressed or implied in several parts of the proposal) that 'the people' have some source of initiative power other than the constitution or the laws of the state.[7]

The Supreme Court of the State of Washington opined a view similar to that of the Attorney General in affirming the Superior Court order that "the initiative [Philadelphia II] goes beyond the scope of power reserved to the people in our state constitution ...."[8] And in a related footnote:

> Petitioners also argue that article I, section 1, of our state constitution, which declares that "[a]ll political power is inherent in the people" confers initiative powers on state citizens. Petitioners cite no authority for their claim that this section provides an independent basis for an exercise of initiative.[9]

The Washington Court failed to notice or understand the meaning of two authorities, the main Framers of the Constitution, Madison and Wilson, cited by Petitioners in their briefs. Madison's statement: "The people were in fact, the fountain of all power...They could alter constitutions as they please"[10]; and Wilson's: "if the errour be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people."[11] are authorities whose views implicitly include the People's right and power to use any device they choose to exercise, including the use of initiative procedures.

In the instant case, the Washington State Government, in the application of its delegated powers, failed to

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[7] See Appendix D at 3.

[8] Philadelphia II v. Gregoire, 128 Wn.2d 707 (1996) at 709, Appendix A.

[9] Ibid. at 15.

[10] Id. note 5 at 534.

[11] Robert Green McCloskey, Works of Wilson, Vol.. 2, Harvard Univ. Press, 1967 at 771.

understand the nature of both the State and Federal Constitutions and their relationship to a citizen's pursuit of public issues and, as a result, erred in a very fundamental way. These Constitutions were not created by the People to limit the powers of the People but to limit the powers of government. The Washington Government went beyond its limits. It abused the People of Washington, as both state and federal citizens, by denying them the use of initiative procedures and obstructing "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open."[12]

III. The Supreme Court of the State of Washington has violated Article I, Section 2. of the U.S. Constitution by limiting what Washington citizens may vote upon. It has interfered with the People's freedom of speech, the right to peaceably assemble and to petition their own constituency on matters of public policy in violation of the First Amendment to the U.S. Constitution.[13] In these offenses it has ignored the rightful protection of citizens by the Separation of Powers Doctrine.

The rights and powers of the People in using the initiative to effect their self-governance are absolute. Alexander Meiklejohn states it well for Petitioners case:

> The First Amendment does not protect a "freedom to speak." It protects the freedom of those activities of thought and communication by which we "govern." It is concerned, not with a private right, but with a public power, a governmental responsibility.
>
> In the specific language of the Constitution, the governing activities of the people appear only in terms of casting a ballot. But in the deeper meaning of the Constitution, voting is merely the external expression of a

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[12] Whitney v. California, 274 U.S.357, 375-376 (1927).

[13] Justice William J. Brennan, Jr., The Supreme Court and the Meiklejohn Interpretation of the First Amendment, Harvard Law Review, 79:1, 1965, *passim*.

wide and diverse number of activities by means of which citizens attempt to meet the responsibilities of making judgments, which that freedom to govern lays upon them. ... Self-government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express....

We, the people who govern, must try to understand the issues which, incident by incident, face the nation. We must pass judgment upon the decisions which our agents make upon those issues. And, further, we must share in devising methods by which those decisions can be made wise and effective or, if need be, supplanted by others which promise greater wisdom and effectiveness....These are the activities to whose freedom it gives its unqualified protection....

...[T]he First Amendment, as seen in its constitutional setting, forbids Congress to abridge the freedom of citizen's speech, press, peaceable assembly, or petition, whenever those activities are utilized for the governing of the nation. In these respects, the Constitution gives to all "the people" the same protection of freedom which, in Article I, Section 6(1), it provides for their legislative agents: "and for any speech or debate in either House, they shall not be questioned in any other place." Just as our agents must be free in their use of their delegated powers, so the people must be free in the exercise of their reserved powers.

...[T]he freedom to vote, the official expression of a self-governing man's (sic)

> judgment on issues of public policy, must be absolutely protected.[14]

The Washington Courts have invaded the Legislative domain of self-governing citizens. The Separation of Powers Doctrine was disregarded, even though it was vehemently argued by Petitioners with cites such as the following in Walton v. Develing, 61 Illin. 210, 205-206 (1871):

> The attempt to....obstruct the freedom of elections....if successful, would result in the overthrow of all liberty regulated by law....**If the courts can [order that an election not be held] from fear of some imaginary wrong, then people....are entirely subservient to the courts, and the consequences are too fearful to contemplate.** (Emphasis added)

and in Pfeifer v. Graves, 88 Ohio St. 473, 104 N.E. 529 (1913):

> We cannot intervene in the process of legislation and enjoin the proceedings of the legislative department of the state. ... we will not presume to control the exercise of that function of government by the General Assembly, **much less by the people, in whom all the power abides**. (Emphasis added)

and in State ex rel. Carson v. Kozer, 515, Supreme Court of Oregon (Oct. 1928):

> The courts, therefore, can no more prevent, when all statutory requirements have been complied with, the people from voting upon a proposed initiative measure, **than it could prevent the Legislative Assembly, when convened, from voting upon the same measure.** (Emphasis added)

The Initiative, as the Legislature of the People,

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[14] Alexander Meiklejohn, The First Amendment is an Absolute, The Supreme Court Review (1961) at 255 - 256.

> "lacks an established, organized support structure to defend it from judicial encroachment. Therefore, popular legislation [initiatives] is far more vulnerable to judicial usurpation than is the legislature."[15]

This Court has the opportunity to address this gross injustice to the People of Washington State and may in addition settle once and for all a litigation-prone issue.

IV. The Supreme Court of the State of Washington has failed to understand the dual citizenship nature of Washington citizens and thereby denies them the reserved rights and powers of the Ninth and Tenth Amendments to the United States Constitution.

The decision of the Supreme Court of the State of Washington was unanimous on the substantive issue that voting citizens of Washington could not exercise their legislative powers because the substance of "the initiative goes beyond the scope of power reserved to the people in our state constitution and thus should not appear on the ballot."[16]

This decision fails to realize that each of their constituents is a citizen of Washington State and a citizen of the United States—two separate and distinct government entities. As individuals they enjoy rights and powers in each entity. Since the federal entity is superior to the state entity, their exercise of power as federal citizens is superior to that exercise as state citizens.

> "The sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each state is in the people of each state."[17]

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[15] Michael J. Farrell, Judiciary and Popular Democracy: Should Courts Review Ballot Measures Prior to Elections?, Fordham Law Review, Vol. 53, 1985, at 930 and 931.

[16] Philadelphia II v. Gregoire, Appendix A at 718.

[17] Page Smith, The Constitution, Morrow Quill Paperbacks, New York, 1980 at 295 quoting Chief Justice Jay in the Chisholm v. Georgia.

Impairment of that federal power of the People of Washington by their courts is all the more egregious. Oblivious to these basic nuances in our governing system, the Washington Court vitiated the meaning of the most fundamental principle of both the State and Federal Constitutions, a point Petitioners forcefully made in their Reply Brief by quoting:

> The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.[18]

Our Constitution recognizes within the civic identity of each individual a federal and a state citizenship. "Our Constitution, then, recognizes and protects two different sets of freedoms. One of these is open to restriction by the government. The other is not open to such restriction."[19] The latter encompasses the use of initiative to exercise the governing responsibilities and powers of the People.

> For the understanding of these principles, it is essential to keep clear the crucial differences between "the rights" of the governed and "the powers" of the governors. [i.e. of us as private citizens in pursuit, individually or collectively, of special interests and of us as public citizens in pursuit of issue of public interest] ... The Second through Ninth Amendments limit the powers of the subordinate agencies in order

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[18] U.S. Term Limits, Inc., et al v. Thornton et al, U.S. Supreme Court, May 22, 1995, U.S. Law Week, Vol. 63 No. 44, 4430, 4431, at page 1 of concurrence.

[19] Alexander Meiklejohn, Political Freedom, Harper & Publishers, New York at 9.

> that due regard shall be paid to the private "rights of the governed." The First and Tenth Amendments protect the governing "powers" of the people from abridgment by agencies which are established as their servants. In the field of our "rights," each one of us can claim "due process of law".... In the field of our governing "power," the notion of "due process" is irrelevant.[20]
>
> All constitutional authority to govern the people of the United States belongs to the people themselves, acting as members of a corporate body politic. They are, it is true, "the governed." But they are also "the governors. Political freedom is not the absence of government. It is self-government.[21]

Petitioners hold the view that the statement "All political power is inherent in the people," the first clause of Section 1., Article I, of the Constitution of the State of Washington, is, (in simple English), an expression of the absolute power of the People and means absolutely what it says! Moreover, this statement of "First Principles" is positioned first in the Constitution to give it supremacy over the rest of the Constitution. It is preceded only by the brief Preamble: "We, the People...do ordain..." which is the expression of sovereignty in the statement. "We, the People," in the Preamble of the United States Constitution.

The political substance and the legal meaning of "All political power is inherent in the people," is the same power embodied in the vote the people chose to exercise in Article I, Section2 of the U.S. Constitution to choose their representatives. It is the same expression of power and legal meaning which prohibits the government from imposing any possible abridgment of the people's political power in the First Amendment to the U.S. Constitution, the central meaning of which this Court so ably defined in New York Times Co. v. Sullivan, 376 U.S. 254 (1964). It is the same

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[20] Alexander Meiklejohn, The First Amendment is an Absolute, Supreme Court Review, 245, 1961 at 254.

[21] Ibid. at 253.

power from which is derived the rights spoken of in the Ninth Amendment and the reserved powers of the Tenth Amendment to the U.S. Constitution.

The inability of the Washington Court to interpret the legal meaning of "All political power is inherent in the people," a statement so fundamental to our entire system of government that it becomes an imperative that the Supreme Court of United States define its legal meaning and clarify this matter to the nation..

V. The Government of the State of Washington, by abridging the privileges and immunities of United States citizens who are also citizens of Washington, violated the Fourteenth Amendment of the U.S. Constitution.

"**No State** shall make or **enforce any law** which shall abridge the privileges or immunities of citizens of the United States; ..." Section 1. Amendment XIV, United States Constitution. (Emphasis added)

VI. The Attorney General and The Supreme Court of the State of Washington recognized the substantial constitutional implications[22] of the Philadelphia II v. Gregoire case with respect to the Washington State Constitution, but they failed to understand it has similar implications for the U.S. Constitution, and as a result they failed to enforce the essence of both constitutions: All political power is inherent in the People.

A literal "crie d'coeur" for instruction was evoked by the Washington Court with the statement: "the general language 'all political power is inherent in the people' **does**

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[22] During oral argument before the Washington Supreme Court, Petitioner was asked by Justice Richard P. Guy: "Sir, if I may ask you a question...I read every word of your proposal, your initiative proposal, and one thing that struck me was that it looked like you were asking for national action as opposed to state action. Do you think you should be here, or do you think you should be back at another supreme court?" Audio tape provided by Clerk of the Supreme Court of the State of Washington.

not provide us with any guidance on this issue."[23] (Emphasis added)

Additionally, after the Superior Court of the State of Washington for the County of Thurston "dismissed this action"[24] of Petitioners, on February 13, 1995, the Respondent, Attorney General Gregoire, to her credit (having won in the lower court), voluntarily joined with Petitioners in bypassing the State Court of Appeals to have the matter heard by the Supreme Court of the State of Washington on the grounds that the instant case was "A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination."[25] An "ultimate determination" can only be rendered by the Supreme Court of the United States, particularly in a case involving the use of a citizen's federal powers as well as the concurrent use of powers as a citizen of a state.

Further, the Supreme Court of the State of Washington decided to review the instant case "even though moot." It determined "that this case involves an issue of "substantial public interest"... desirable to provide guidance [and] likely to recur.... We find these reasons adequate to justify review of the substantive issues."[26]

The Supreme Court of the United States is the only authority that can address the lack of understanding on constitutional principles so fundamental to our form of self-government, where people are politically supreme and legally to be respected that way by governments.

The issues in question are substantive and affect the political freedom and the exercise of the inherent political power of every American. Until properly adjudicated by this Court abridgments will continue to recur throughout our nations governments occasioning judicial attention with costly consequences, politically demoralizing the American constituency. Lastly, this case should be heard in the interest of judicial economy.

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[23] Philadelphia II v. Gregoire, Appendix A at 718.

[24] Appendix B.

[25] State of Washington Rules on Appeal, RAP 4.2 (a) (4) Public Issues.

[26] Philadelphia II v. Gregoire, Appendix A at 712.

CONCLUSION

The most important court in a most important state, has made a nullity of the most important and fundamental premise of our system of government. If our courts cannot understand the meaning of: all political power is inherent in the People, then there is little doubt that the Great American Experiment will not survive the next century. When the gatekeepers of political freedom do not know what they are guarding then the threat is not on the outside of the gate but on the inside.

There is probably a no more demoralizing effect on the polity of our nation than the lingering influence of substantive constitutional issues inadequately adjudicated because issues are deeply imbedded in overly complex emotional events, improperly framed and off the mark. The hope of the Court to do the best it can in an accurate relevant interpretation of the Constitution is to secure a case that reflects "an exercise of...basic constitutional rights in their most pristine and classic form."[27] In a contemporary context Petitioners feels that Philadelphia II v. Gregoire is the case this Court is looking for.

Respectfully submitted,

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June 28, 1996

[27] Harry Kalven, Jr. , The Concept of the Public Forum: Cox v. Louisiana at 7, quoting Justice Stewart in Edwards.

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 62663-4

PHILADELPHIA II, ET AL.,

Appellants,

v.

CHRISTINE O. GREGOIRE,

Respondent.

February 29, 1996
En Banc

SANDERS, J., did not participate in the disposition of this case.

Nature of Action: The supporters of an initiative petition sought a writ of mandamus to compel the Attorney General to prepare a ballot title and summary.

Superior Court: The Superior Court for Thurston County, No. 95-2-00349-1, Wm. Thomas McPhee, J., on February 13, 1995, dismissed the action on the grounds that the subject of the initiative did not fall within the legislative authority of the state.

Supreme Court: Holding that the Attorney General was obligated to prepare a ballot title and summary, but that the initiative concerned subjects beyond the scope of state law and was invalid, the court *affirms* the decision of the trial court.

Mike Gravel, pro se; *Robert D. Adkins*, pro se; and *Michael J. Underwood*, for appellants.

Christine O. Gregoire, Attorney General, and *Jeffrey T. Even* and *James K. Pharris, Assistants*, for respondent.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

Am Jur 2d, Appellate Review §§ 646, 647; Initiatives and Referendum §§ 52, 55; Statutes §§ 145, 146, 165, 206.

See ALR Index under Initiative and Referendum; Moot and Abstract Matters; Statutes.

PEKELIS, J.P.T.* — Petitioners appeal a decision of a superior court dismissing their petition to obtain a ballot title from the Attorney General for Initiative 641. The superior court dismissed the petition because it determined that the initiative did not fall within the scope of the legislative authority of the state. Although we conclude that the Attorney General should have prepared the ballot title, we also hold that the initiative goes beyond the scope of power reserved to the people in our state constitution and thus should not appear on the ballot. We therefore affirm the superior court.

Petitioner Philadelphia II is a nonprofit corporation set up in order to put Initiative 641, also named Philadelphia II, on the ballot in Washington State. Petitioners also include Robert Adkins, a Washington State voter, and Mike Gravel, principal architect of the Philadelphia II initiative.

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* Justice Roselle Pekelis is serving as a justice pro tempore of the Supreme Court pursuant to Const. art. IV, § 2(a) (amend. 38).

The Philadelphia II initiative seeks to establish in the United States "direct democracy" by means of a federal, nationwide initiative process to complement the current congressional system, and ultimately to call a world meeting where representatives from participating countries will discuss global issues. The sponsors of Philadelphia II believe that if 51 percent of the nation's eligible voters choose to adopt Philadelphia II, it will automatically become federal law. The sponsors hope to achieve this goal by placing the Philadelphia II measure before voters in individual states, thereby gaining the necessary 51 percent of votes if successful.

The initiative has 12 sections. The substantive sections declare that direct democracy is "hereby initiated . . . through a national state-by-state initiative process whereby this act is enacted as state law by the approval of state voters." Washington State Initiative 641, Clerk's Papers at 12. Philadelphia II also creates the United States Electoral Administration (USEA) to facilitate this process. Among the USEA's functions are to place the Philadelphia II initiative on other state ballots or conduct its own elections if no means exist to place an initiative on a state's ballot, to create a legislative drafting service to assist citizens in the preparation of their initiatives, to defend the right of direct democracy against legal challenges, and to develop a voter registration system. The initiative also appropriates state money as a loan to the USEA, to be repaid from federal funds when Philadelphia II becomes federal law. The USEA is subject to Washington state law and federal law where applicable.

Philadelphia II sets forth new procedures and regulations for initiatives on local, state, and national levels, subject to compliance with a state's constitution. It also mandates that the USEA provide, at public expense, information about citizen initiatives and sets regulations regarding fundraising and disclosure by sponsors and opponents of initiatives.

Other sections of the initiative deal with the world meet-

ing, to be held when a "critical mass" of one billion people worldwide have expressed their willingness through democratic initiative or referendum to hold the meeting. Philadelphia II sets forth methods to determine the time and place of the meeting, as well as complicated procedures to determine the number of each nation's delegates. Any declarations ensuing from the meeting will not be binding on the participating nations.

The remaining sections are primarily procedural, providing that all governmental jurisdictions shall cooperate to the greatest extent possible and that in the event a section is deemed unconstitutional, the other sections remain in force. If Philadelphia II has not become law within 10 years of its passage in Washington, it shall be null and void. If, on the other hand, it becomes federal law, it shall be deleted from the state codes and added to the federal code.

Petitioners filed the initiative with the Secretary of State pursuant to RCW 29.79.010. The Secretary of State then transmitted the proposed initiative to the Office of the Attorney General for preparation of a ballot title and explanatory statement. However, the Attorney General refused to prepare the title or statement, explaining in a letter to the Secretary of State that "the contents of the measure are beyond the legislative power reserved to the people under the Washington State Constitution." Letter of 1/26/95 from Pharris to Secretary of State, Clerk's Papers at 9. Specifically, the Attorney General determined that much of the initiative was a declaration of philosophy and thus not legislation, that the USEA would not be a state agency, and that, in general, the initiative sought to exercise legislative power outside the borders of Washington State.

Petitioners filed suit against the Attorney General in superior court, seeking, inter alia, a writ of mandamus ordering the Attorney General to prepare a ballot title and explanation. The superior court dismissed the action, holding that the initiative was not within the scope of the

legislative authority of Washington State. We granted review of the order.

[1] As a preliminary matter, we address whether the appeal is moot. Although neither party has raised the issue, the initial relief requested by Petitioners can no longer be granted since the time for filing for the November 1995 election has already passed. However, we may decide to review a case, even though moot, if it involves a matter of "substantial public interest." *Westerman v. Cary*, 125 Wn.2d 277, 286, 885 P.2d 827, 892 P.2d 1067 (1994) (quoting *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). This analysis comprises three factors: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." *Id.* (quoting *Hart v. Department of Social & Health Servs.*, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988)). In addition, we consider the likelihood that the issue will never be decided by a court due to the short-lived nature of the case. *Id.* at 286-87.

We determine that this case involves an issue of "substantial public interest" and reach the merits. Each of the three factors weighs in favor of review. The issue is of a public nature, it would be desirable to provide guidance to the Attorney General for future actions, and the issue is likely to recur. Not only are these factors present, but review will also avoid a situation in which the Attorney General could prevent initiatives from ever appearing on the ballot simply by refusing to prepare the ballot title, knowing that the case would be moot by the time it was reviewed by this court. We find these reasons adequate to justify review of the substantive issues.

Turning to an analysis of the merits of the case, we first consider whether the Attorney General had the authority to refuse to prepare a ballot title and summary for the Philadelphia II initiative.

[2] Although we have not previously addressed the precise issue before us, statutory language and analogous

case law compel the conclusion that the Attorney General does not have discretion to refuse to prepare a ballot title due to the initiative being beyond the scope of Washington's legislative power.

The duties of the Attorney General regarding initiative ballot titles and summaries are set forth in RCW 29.79.040:

> Within seven calendar days after the receipt of an initiative or referendum measure the attorney general *shall* formulate and transmit to the secretary of state the concise statement [posed as a question and not to exceed twenty words], bearing the serial number of the measure and a summary of the measure, not to exceed seventy-five words, to follow the statement.

RCW 29.79.040 (emphasis added).

[3, 4] Use of the term "shall" by the Legislature indicates that the Attorney General must prepare a ballot title and summary regardless of the content of the initiative. The statutory term "shall" is presumptively imperative unless a contrary legislative intent is apparent. *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (quoting *Erection Co. v. Department of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993)). No contrary legislative intent has been cited by the Attorney General. Furthermore, this presumption is strengthened where, as here, other sections of the same statute contain the word "may." *Krall*, 125 Wn.2d at 148; *compare* RCW 29.79.040 (Attorney General "shall" prepare title) *with* RCW 29.79.150 (Secretary of State "may" refuse to file initiative petition if not in proper form). There is simply no indication that the Legislature intended the Attorney General to review the petition for its substance.

Our determination that the Attorney General lacks discretion in preparing a ballot title and summary is consistent with prior Washington cases. In *Ballasiotes v. Gardner*, 97 Wn.2d 191, 195, 642 P.2d 397 (1982), we held that a county prosecutor overstepped the bounds of his authority by refusing to prepare a ballot title for a refer-

endum because he believed the subject matter to be exempt from the county charter authorizing referendums. As here, the authorizing statute used the term "shall" in describing the prosecutor's duties to prepare a ballot title. *Id.* at 195. *See also State ex rel. O'Connell v. Kramer*, 73 Wn.2d 85, 88-89, 436 P.2d 786 (1968) (holding that Secretary of State could not refuse to transmit initiative to Attorney General); *Save Our State Park v. Hordyk*, 71 Wn. App. 84, 91, 856 P.2d 734 (1993) (holding that county auditor had no authority to refuse to put an initiative on the ballot).

[5, 6] Moreover, the Attorney General's argument that if an initiative exceeds the scope of initiative power, it is not an initiative at all and that the Attorney General therefore has neither the duty nor the authority to prepare the ballot title and summary begs the question of whether the Attorney General or the courts should be determining the validity of the proposed measure. It is true that a *court* may review the substance of a proposed initiative to determine whether it exceeds the scope of initiative power described in Article II, Section 1, of the Washington State Constitution.[1] *See, e.g., Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746, 620 P.2d 82 (1980); *Ford v. Logan*, 79 Wn.2d 147, 152, 483 P.2d 1247 (1971). However, the construction of the meaning and scope of a constitutional provision is exclusively a judicial function. *State ex rel. Munro v. Todd*, 69 Wn.2d 209, 213, 417 P.2d 955 (1966) (interpreting article IV, section 1, of the state constitution), *amended on other grounds by* 426 P.2d 978 (1967); *Washington State Highway Comm'n v. Pacific Northwest Bell Tel. Co.*, 59 Wn.2d 216, 222, 367 P.2d 605 (1961) (interpreting article IV, section 1, of the state constitution). Accordingly, we hold that courts, not the Attorney General, should determine whether a proposed initiative exceeds the power reserved to the

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[1] Article II, Section 1, of the Washington State Constitution establishes the initiative and referendum processes whereby the people my enact or reject laws independently of the Legislature.

people in article II, section 1, of the state constitution. *See also Fischnaller v. Thurston County*, 21 Wn. App. 280, 285, 584 P.2d 483 (1978) (holding that county auditor could reject declaration of candidacy only if not required to interpret constitutional or statutory language), *review denied*, 91 Wn.2d 1013 (1979).

Finally, we note that this result accords with the majority of our sister states addressing this issue. *See Schmitz v. Younger*, 21 Cal. 3d 90, 577 P.2d 652, 653, 145 Cal. Rptr. 517 (1978) (describing preparation of ballot title by attorney general as purely ministerial); *deBottari v. Norco City Council*, 171 Cal. App. 3d 1204, 217 Cal. Rptr. 790, 792 (1985) (holding that city council had mandatory duty to place referendum on ballot and citing other California cases holding that city registrar, county clerk, county board of supervisors, and the secretary of state similarly had mandatory duties) *review denied*, December 19, 1985; *Wyman v. Secretary of State*, 625 A.2d 307, 311 (Me. 1993) (holding that secretary of state had no discretion to determine potential invalidity of initiative); *Williams v. Parrack*, 83 Ariz. 227, 319 P.2d 989, 991 (1957) (holding that city council had ministerial duty to place initiative on ballot); *Fried v. Augspurger*, 164 N.E.2d 466, 468 (Ohio Com. Pl. 1959) (stating that board of county commissioners had mandatory duty to place referendum on ballot once sufficient, valid signatures obtained); *but see Paisner v. Attorney General*, 390 Mass. 593, 458 N.E.2d 734, 737-38 (1983) (holding that attorney general has discretion to determine whether initiative would enact "law" before certifying petition); *State ex rel. Brant v. Beermann*, 217 Neb. 632, 350 N.W.2d 18, 21 (1984) (stating that secretary of state cannot pass on validity of initiative unless the subject of the initiative is invalid or unconstitutional on its face).

[7] This does not leave the Attorney General without recourse to prevent an initiative from reaching the ballot. If the Attorney General believes an initiative exceeds the scope of the initiative power, she should prepare the bal-

lot title and summary in accordance with her statutory duty and then seek an injunction to prevent the measure from being placed on the ballot. *See Save Stanislaus Area Farm Economy v. Board of Supervisors*, 13 Cal. App. 4th 141, 16 Cal. Rptr. 2d 408, 412-13 (1993) (holding that public official must comply with ministerial duties even if initiative invalid; official could then bring court action to enjoin the initiative); *cf. Ford v. Logan*, 79 Wn.2d 147, 483 P.2d 1247 (1971) (affirming court order to enjoin initiative from being placed on the ballot).

[8] Because the parties have fully briefed and argued the substantive issues in detail, and the validity of the initiative itself was the ground for the denial by the superior court of the petition by Philadelphia II, we proceed to the substantive question of whether the Philadelphia II initiative did in fact exceed the scope of the initiative power. Additionally, there is every reason to believe that the Attorney General would seek an injunction if we were to remand the case. Therefore, judicial economy compels us to address this issue here. *See also deBottari v. Norco City Council*, 171 Cal. App. 3d 1204, 217 Cal. Rptr. 790 (1985) (reaching merits of pre-election judicial review despite holding that city council had breached mandatory duty to submit initiative to vote), *review denied*, December 19, 1985.

[9] The initiative power was created in 1911 by constitutional amendment. The amendment provided that "[t]he legislative authority of the state of Washington shall be vested in the legislature . . . but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature . . . ." Wash. Const. art. II, § 1. Generally, courts are reluctant to rule on the validity of an initiative before its adoption by the people. This reluctance stems from our desire not to interfere in the electoral process or give advisory opinions. *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746, 620 P.2d 82 (1980).

However, an established exception to this rule in Washington is that a court will review a proposed initiative to determine if it is beyond the scope of the initiative power. *Id.* at 746 (citing, inter alia, *Leonard v. City of Bothell*, 87 Wn.2d 847, 557 P.2d 1306 (1976); *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973); *Ford v. Logan*, 79 Wn.2d 147, 483 P.2d 1247 (1971)). The reasoning behind the exception was stated as follows:

> A fundamental limit on the initiative power inheres in its nature as a legislative function reserved to the people. . . . It is clear from the constitutional provision that the initiative process, as a means by which the people can exercise directly the legislative authority to enact bills and laws, is limited in scope to subject matter which is legislative in nature.

Ford v. Logan, 79 Wn.2d 147, 154-55, 483 P.2d 1247 (1971).[2]

The idea that courts can review proposed initiatives to determine whether they are authorized by article II, section 1, of the state constitution is nearly as old as the amendment itself. *See State ex rel. Berry v. Superior Court*, 92 Wash. 16, 159 P. 92 (1916) (enjoining printing and distribution of proposed initiative measure due to preamble being improper argument and not legislative in character). Recognizing the importance of the initiative power, however, this court has allowed for pre-election review only in rare circumstances, consistently making the distinction that while a court may decide whether the initiative is authorized by article II, section 1, of the state constitution, it may not rule on the constitutional validity of a proposed initiative. *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 745-46. We adhere to that distinction and review the Philadelphia II initiative only to determine

[2] Petitioners correctly note that the *Ford v. Logan* lead opinion from which this language is taken, was signed by only three justices, with two justices concurring in the result only. However, the principle that courts may review initiatives to determine if they are legislative in character has been restated in numerous opinions. *See, e.g., Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 620 P.2d 82 (1980); *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973).

whether it is authorized by article II, section 1, of the state constitution.

Petitioners urge us to overrule *Ford v. Logan* and subsequent case law to hold that *no* pre-election review is proper, provided that procedural requirements have been met and there is no indication of fraud.[3] However, the rationale of the *Ford* court in distinguishing review of the constitutional validity of a proposed measure and whether the measure is authorized by our state constitution is sound and finds support among commentators and other jurisdictions. *See* James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 313, 320 (1989) (recommending distinction and stating that most courts allow pre-election review of procedural and subject matter limitations). The distinction recognized by *Ford* allows a sensible balance between allowing a court to prevent public expense on measures that are not authorized by the constitution while still protecting the initiative power from review of an initiative's provisions for possible constitutional infirmities. We thus decline to overrule *Ford* and consistent cases.

[10] As we have discussed, the initiative process is limited to acts that are legislative in nature. *Ford*, 79 Wn.2d at 154. For example, in *Ford*, we held that an attempt to repeal the King County charter by initiative was beyond the scope of permissible authority as it was more in the nature of a constitutional amendment than the mere legislative act authorized in the state constitution. *Id.* at 156-57. We have affirmed *Ford*'s reasoning numerous times in distinguishing initiatives proposing legislative acts from those proposing administrative acts, enjoining the latter. *See, e.g., Heider v. City of Seattle*, 100 Wn.2d

[3] Petitioners also argue that article I, section 1, of our state constitution, which declares that "[a]ll political power is inherent in the people" confers initiative powers on state citizens. Petitioners cite no authority for their claim that this section provides an independent basis for an exercise of initiative power. Moreover, the general language "all political power is inherent in the people" does not provide us with any guidance on this issue.

874, 675 P.2d 597 (1984); *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973).

Not only must the proposed initiative be legislative in nature, but it must be within the authority of the jurisdiction passing the measure. *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747. In that case, we affirmed an injunction preventing a vote on a citywide initiative because it conflicted with state law. *Id.* at 745, 748. We reasoned that the initiative attempted to achieve something that was not within its power and was thus invalid. *Id.* at 748.

Therefore, in order to be a valid initiative, Philadelphia II must be legislative in nature and enact a law that is within the state's power to enact. With these restrictions in mind, we examine the Philadelphia II initiative and conclude that it goes beyond the scope of Washington State initiative power as it attempts to exercise authority that goes beyond the jurisdiction of the state.

The fundamental and overriding purpose of Philadelphia II is to create a federal initiative process. Although state procedures for initiatives are affected by Philadelphia II, these changes are incidental to the primary goal of the initiative. The entire initiative is suffused with a purpose that is national or global in scope. For example, the section creating the electoral agency responsible for presiding over state and national initiatives declares its purpose as "to permit the full expression of sovereignty of citizens in every political jurisdiction in the United States . . . ." Initiative 641, § 4, Clerk's Papers at 13. Furthermore, a substantial portion of the initiative is devoted to procedures for calling a "world meeting" when an appropriate number of citizens worldwide express their willingness via initiatives to participate in such an event. Significantly, if the initiative does not eventually become enacted as federal law, it is deleted from the state codes. If the initiative does become federal law, it is also deleted from state codes. Thus, the proposed change in state law is merely an ephemeral stepping stone to a national initiative process and has no independent state purpose.

While the goals of the Philadelphia II initiative may be laudable, it is simply not within Washington's power to enact federal law. Our initiative process establishes a method independent from the Legislature for enacting state laws and cannot be used to enact laws beyond the jurisdiction of the state. Consequently, the Philadelphia II initiative does not fall within the provisions in our state constitution for initiatives.

In conclusion, the Attorney General should have prepared the ballot title and summary and then sought to enjoin its placement on the ballot. Nevertheless, because we determine that the initiative is beyond the scope of Washington's initiative power, we decline to direct the Attorney General to do so in this case. The judgment of the superior court is affirmed.

DURHAM, C.J., and DOLLIVER, SMITH, GUY, JOHNSON, MADSEN, ALEXANDER, and TALMADGE, JJ., concur.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF THURSTON

NO. 95-2-00349-1

PHILADELPHIA II, a corporation; ROBERT B. ATKINS, an individual; and MIKE GRAVEL, an individual,
Petitioners,

vs.

CHRISTINE O. GREGOIRE, Attorney General of the State of Washington,
Respondent.

ORDER DISMISSING ACTION

[Stamp—FEB 28 1995]

THE COURT having reviewed the Petition and Answer, Petitioners' Memorandum in Support of Petition of Appeal, and Respondent's Response to Memorandum in Support of Petition of Appeal, and having heard argument of counsel,

THE COURT finds that the measure, identified as proposed Initiative Measure 641, is not within the scope of the legislative authority of the State of Washington, and that therefore Respondent need not prepare a ballot title and summary of it pursuant to RCW 29,79.040, and therefore

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action be dismissed with prejudice.

DATED this 13 day of February, 1995.

/s
JUDGE

Presented by:

Jeffrey T. Even
Assistant Attorney General
WSBA No. 20367

Attorney for Respondent
Christine O. Gregoire

APPENDIX C

Philadelphia II

Washington State Initiative 641

AN ACT Relating to the establishment of direct democracy; adding a new chapter to Title 29 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION: **Section 1: SHORT TITLE.** This act shall be known and may be cited as **Philadelphia II.**

NEW SECTION: **Section 2. PREAMBLE. We, the people, are sovereign.** We have the inalienable right and responsibility to choose the most effective manner to govern ourselves. Representative government is a political tool of governance in which we place some of our powers for our individual and collective benefit. Neither representative government nor those individuals who administer the restricted powers we place therein are sovereign. Present political governance solely by the representative governments found in most representative democracies of the world is grossly outmoded in this age of information. Laws and procedures are lacking to directly and fully exercise our sovereignty in the governments of most representative democracies. There are no procedures available to us, as world citizens, to address problems of governance that transcend the legal domains of nation-states. The historic declaration that representative democracies are controlled and operated by the people has never been nor will it ever be realized until direct democracy, the direct political participation of people at all levels of political governance, is established. A working partnership of representative democracy and direct democracy is vital to the human quest for liberty

and happiness, the general welfare, and the ecological balance of our planet earth.

Therefore, we, as citizens of the state of Washington, the United States, and the world, exercise our sovereignty by enacting this initiative law, Philadelphia II, that will start a process in which we and other Americans can bring into being direct democracy, enabling us to directly determine public policy, enact laws as do our elected representatives, and convene a world meeting to which we shall elect delegates to address the problems of global governance.

NEW SECTION: **Section 3. DIRECT DEMOCRACY.** Direct democracy, the direct political participation of people, is hereby initiated in the United States through a national state-by-state initiative process whereby this act is enacted as state law by the approval of state voters. This act shall become a law of the United States of America when a majority of United States voting citizens vote to enact the Philadelphia II initiative. Direct democracy shall operate in partnership with existing representative democracy. This goal is realized:

(1) IMPLEMENTATION. The political empowerment of persons in direct democracy shall be implemented in the following manner:

(a) Within nations. Wherever government exists, at the local, regional, and national levels, the people may assert their sovereignty by exercising their legislative powers through the use of citizen initiatives to make laws, modify governments, and determine public policy. The agency of government required and the procedures necessary to fully implement direct democracy within all governmental jurisdictions of the United States are set forth in Sections 4 and 5 of this act.

(b) Beyond nations. Where no government, laws, or effective political governance exist, at the global level of human activity, the people may assert their sovereignty by initiating the first act of collective governance--the convening of a world meeting and the choosing of delegates to represent their interests in addressing the problems of global governance. The procedures for convening the world meeting and for electing delegates are detailed in Sections 6 and 7 of this act.

(2) AUTHORITY. The authority to enact Philadelphia II into law, establishing direct democracy in all governmental jurisdictions of the United States by means of a national state-by-state citizen initiative, rests on three self-evident foundations:

(a) The absolute sovereignty of each person. Each human being is made inalienably sovereign by life itself.

(b) Historic precedent. The historic precedent was established by the voluntary act of ratifying the Constitution by the people of the United States, on a state-by-state basis from 1787 to 1790. The proposed constitutional document, drafted by delegates to a meeting in Philadelphia called for another purpose, had no force of law until it was ratified by the people through a convention procedure, which then made it the law of the land. This precedent of citizen voluntarism was set forth in Article VII of the United States Constitution and was accepted and implemented by the people before the Constitution was vested with the force of law through ratification.

(c) Reservations of the United States Constitution. The United States Constitution is the supreme law of our land. Articles IX and X of amendment to the Constitution specifically reserve to the people rights and powers not enumerated or delegated by the Constitution.

NEW SECTION: **Section 4. UNITED STATES ELECTORAL ADMINISTRATION.**

Finding: Elections in the United States are conducted by state and local governmental officials. No apparatus or procedures exist to conduct national elections.

Therefore: In order to permit the full expression of the sovereignty of citizens in every political jurisdiction of the United States, a United States electoral administration is hereby established to determine the willingness of United States voters to institute direct democracy in the United States and to convene and participate in a world meeting.

(1) BOARD OF DIRECTORS. *Finding*: A conflict of interest exists for those elected officials who supervise elections within state governments in that these individuals seek reelection to their offices in the very elections they supervise.

Therefore: The United States electoral administration shall be governed by a board of directors representative of the diversity of cultural, economic, environmental, political, religious, and social interests of all citizens embodied in organizations outside of government--nongovernmental organizations.

(a) Membership. The organizations listed below shall be entitled to provide a chief executive or chief policy officer, or other most senior officer to serve on the board of directors of the United States electoral administration. The membership of the board may be expanded or contracted by a vote of two-thirds of the sitting board members. The board shall, after Philadelphia II is enacted into federal law, solicit additional nongovernmental organizations qualified to serve on the board.

Center for Defense Information
1500 Massachusetts Ave. NW
Washington, DC 20005

Center for Economic Conversion
222 View Street, Ste. C
Mountain View, CA 94041

Council for Democratic and
Secular Humanism, Inc.
P.O. Box 664
Amherst, NY 14226-0664

Global Exchange
2017 Mission St., #303
San Francisco, CA 94110

Philadelphia II
P.O. Box 2566
Monterey, CA 93942

The Peace Network
740 Kings Highway
Rochester, NY 14617

(b) Term. No individual board member shall serve for more than eight years, whether they be consecutive or in separate periods.

(c) Powers. The board is authorized and shall exercise the powers necessary to organize itself and to fulfill its duties subject to the Universal Declaration of Human Rights adopted and proclaimed by the general assembly of the United Nations on December 10, 1948, and to those federal, state, and local laws that do not impair the full expression of the legislative sovereignty of citizens of the United States.

(d) Oath or affirmation of office. Before any member of the board takes office, he or she shall swear or affirm the following:

"I (name) (swear or affirm) to defend and uphold to the best of my ability the sovereign right of the people to democratically create and modify governments, their constitutions, and their laws."

(2) DUTIES. In fulfilling its duties, the United States electoral administration shall follow the laws of the state of Washington and the United States and appropriate regulations.

(a) Organization. The United States electoral administration shall draw up bylaws to govern its activities, the elec-

tion of its officers, and its operating procedures, and to determine its principal place of business. The board may select and contract for working facilities, hire staff, and prescribe their duties and compensation, as well as its own. The board may apply for and receive funds, incur debt when necessary, and act in any responsible manner as an independent fiduciary. All board meetings shall be open to the public except when personnel matters are under consideration. Except where a clear and pressing need can be demonstrated, existing governmental functions and facilities shall not be duplicated.

State-by-state national initiative. The United States electoral administration, in order to determine the willingness of United States voters in other states to establish direct democracy in the United States, shall: **(i) Make changes in the Philadelphia II text** to recognize its approval by citizens of Washington; **(ii) negotiate with appropriate state governmental election officials** to include Philadelphia II as an initiative on their election ballot at the earliest general election, paying a fair cost to each state for such inclusion; or **(iii)** failing to secure the cooperation of state election officials, **place Philadelphia II before the voting public** by whatever means possible, including conducting independent elections by advertising a date, time, and places reasonably convenient to all citizens where voters may present themselves to cast their ballot for or against Philadelphia II; and **(iv) certify the results** of said elections.

(c) Elections. The United States electoral administration shall develop the means, procedures, regulations, and new technology: **(i) To facilitate the communication** of information on public policy issues to voters; **(ii) to facilitate voter participation** in national, state, and local initiative elections; and **(iii) to conduct the election of delegates** to represent the people of the United States at a world meeting.

(d) Legislative drafting service. The United States electoral administration shall establish and operate a research and legislative drafting service for the benefit of citizens seeking assistance in researching and preparing initiatives.

(e) Legal challenges. The United States electoral administration shall represent and pursue the people's interests with respect to any legal challenge to the right of sovereign people to democratically create and modify governments, constitutions, and laws and establish public policy appropriate to any political jurisdiction in the United States.

(f) Voter registration. The United States electoral administration shall develop a voter registration system wherein every voter is automatically registered on the occasion of his or her first vote cast in any United States electoral administration election. The registration shall be evidenced by an identification method, number, or other appropriate technically reliable method. The registration shall be valid for life and be recognized in any political jurisdiction in the United States. The identifier shall be used exclusively for voting purposes by the United States electoral administration. Other use by an individual, a public or private corporation, or an agency of any governmental body shall be a felony punishable by one year in prison or a fine not to exceed one hundred thousand dollars, or both, per instance, applied personally to each individual who is instrumental to the violation regardless of office.

(g) Appointment. The United States electoral administration shall appoint one of its board members to serve on the board of the world meeting secretariat identified in Section 7 of this act when an electoral administration is established in any political jurisdiction in at least one other nation.

(3) APPROPRIATIONS. The majority of voters voting in respective jurisdictions hereby appropriate the funds necessary to initiate the implementation of direct democracy.

(a) State appropriation. Pursuant to Section 4, Article VIII of the Constitution of the state of Washington, the legislature shall appropriate by law a sum of two million five hundred thousand dollars or a sum equal to fifty cents per Washington citizen, as determined by the most recent national census, whichever is larger, to the United States electoral administration as a loan. These funds shall be disbursed within ten days of receipt of an application from the board of directors of the United States electoral administration.

(b) Federal appropriation. At such time as Philadelphia II becomes a law of the United States, there is appropriated pursuant to Article I, Section 9(7) of the United States Constitution, from the treasury of the United States to the United States electoral administration, a sum equal to the amounts loaned to the United States electoral administration by various states or other sources. The United States electoral administration, from the funds appropriated to it, shall then repay all state and other loans. Thereafter, the United States electoral administration shall operate and be funded as an independent agency of the United States government.

NEW SECTION: **Section 5. CITIZEN INITIATIVES.** The United States electoral administration, in developing the policies and procedures to receive, process, and schedule initiatives for the ballot and the regulations relating to the conduct of elections, shall be guided by the state Constitution and the experiences and laws of governmental jurisdictions world-wide, with a view to facilitate the direct political participation of people in their legislative capacity in all governmental jurisdictions at all political levels. The United States electoral administration procedures and regulations shall include, but are not limited to, the following:

(1) SUBJECT MATTER. Initiatives shall pertain to public policy subject matter relevant to the jurisdiction in question. Each initiative shall contain only one subject, but

may include related or mutually dependent parts. The language of the initiative title, the summary, poll questionnaires, and any official print or broadcast communication about the initiative shall be determined by the United States electoral administration in consultation with the initiative sponsors and in compliance with the state Constitution.

(2) WORD LIMIT. No initiative, excluding the preamble, findings, and language that is submitted for repeal or that repeats existing law, may contain more than six thousand words.

(3) QUALIFICATION. An initiative shall be placed on the ballot in the relevant jurisdiction if it qualifies by any one of the following methods and if it complies with the state Constitution:

(a) Legislative resolution. The legislative body of a relevant governmental jurisdiction, federal, state, or local, may approve by resolution an initiative as submitted by its sponsor for placement on the ballot.

(b) Citizen petition. Citizen petitions may qualify initiatives for the election ballot in the following venues: **(i) For federal initiatives** that propose laws or changes in laws, the petition shall be signed by a number of registered voters equal to at least two percent of those voting in the last presidential election. For federal initiatives that propose changes to the Constitution, the petition shall be signed by a total number of registered voters equal to at least six percent of those voting in the last presidential election. Further, the two percent or the six percent criterion must be satisfied within each of at least ten states, signatures of state citizens being counted as a percentage of those who voted in the last presidential election in the same state. The time period allotted to gather qualifying petition signatures for federal initiatives shall not exceed two years. **(ii) For state and local initiatives** that propose laws or changes in laws, the petition

shall meet the requirements established in the state Constitution and shall be signed by a number of registered voters equal to at least two percent of those voting in the last presidential election in their state or local jurisdiction. For state and local initiatives that propose changes to state Constitutions or local charters, the petition shall be filed as prescribed in the state Constitution and shall be signed by a number of registered voters equal to at least six percent of those voting in the last presidential election in their state or local jurisdiction. The time period allotted to gather qualifying petition signatures for state and local initiatives shall not exceed one year.

(c) Public opinion poll. The United States electoral administration shall approve an initiative that proposes laws or changes in laws for placement on the ballot if it receives affirmative responses from at least thirty-five percent of the respondents to a public opinion poll conducted in the relevant jurisdiction on the specific subject of the initiative. Initiatives that propose to modify a constitution or a charter must receive affirmative responses from at least fifty percent of the respondents. The initiative, when filed with the United States electoral administration, shall be accompanied by the proposed poll questionnaire and a copy of a contract between the initiative sponsor and a reputable and qualified public opinion research firm. All of the questions on a poll questionnaire shall be reviewed and accepted if they accurately relate to the subject of the initiative and are properly designed to elicit from respondents a clear, unambiguous affirmative or negative response to the subject of the initiative.

(4) CONSTITUTIONS AND CHARTERS. An initiative that modifies a constitution or charter shall meet the requirements established in the state constitution and shall require a decision by voters voting in two separate elections separated in time by at least six months. The first electoral

decision shall be referred to as the initial vote and the second as the final vote. The electoral decision in the final vote shall be final, even if it reverses the decision of the initial vote.

(5) PUBLIC HEARING. The United States electoral administration, as soon as practicable after an initiative is qualified for placement on the ballot, shall hold a public hearing properly noticed to the public on the subject of the initiative. The United States electoral administration hearing shall include the initiative sponsor and representation from the legislative body of the relevant jurisdiction. Changes to the text of the initiative, which may be necessary as a result of the hearing, may be made with the concurrence of the sponsor so long as the intent of the subject of the initiative is not altered.

(6) LEGISLATIVE ADVISORY VOTE. An initiative, after being qualified for the election ballot, shall be placed before the legislative body of the relevant jurisdiction for an advisory vote on the subject of the initiative as soon as practicable after the public hearing.

(7) LEGISLATIVE OVERSIGHT. Unless it be by a two-thirds vote of its members, the legislative body of the relevant jurisdiction shall not amend, change, or alter any law enacted by initiative for two years after its effective date. Thereafter, an initiative law may be modified by simple majority.

(8) JUDICIAL REVIEW. Any court of proper jurisdiction is authorized to determine the constitutionality of any initiative.

(9) EFFECTIVE DATE. The effective date of any initiative, if not stated in the initiative or the state Constitution, shall be forty-five days after its approval by a majority of voters voting in the election.

(10) SPONSOR. For each person or organization considered to be a main sponsor of an initiative, that person's name, his or her organizational affiliation if appropriate, or that organization's name and the name of its chief executive or chief policy officer, and the address and telephone number must appear on the face of the initiative, petition, and any official printed matter and must be conspicuously announced or displayed in any broadcast communication informing, promoting, or advocating the initiative by its sponsor or by the United States electoral administration.

(11) OPPONENT. For each person or organization considered to be a main opponent of a initiative, that person's name, his or her organizational affiliation if appropriate, or that organization's name and the name of its chief executive or chief policy officer, and the address and telephone number must appear on the face of any printed matter and must be conspicuously announced or displayed in any broadcast communication opposing the initiative.

(12) COMMUNICATIONS. *Finding*: Information is vital to an election decision. To permit the availability and dissemination of information about an initiative to depend on private or corporate wealth is to skew the decision of citizens in favor of holders of that wealth. Democracy requires that fair and adequate information on public policy questions be available to its citizens.

Therefore: The United States electoral administration shall provide at public expense a basic level of information to acquaint voters in relevant jurisdictions with a statement on the implications as well as the substance and expected impact of an initiative that will be presented to them for decision. The United States electoral administration shall cause to be prepared a separate information pamphlet for each initiative with an unbiased analysis of the subject, with accompanying statements by proponents and opponents. Pamphlets shall be

mailed to all registered voters of the relevant jurisdiction at least thirty days before the day of election. After this act becomes a law of the United States, the United States postal service shall transport initiative information pamphlets to registered voters without charge. The United States electoral administration shall cause the information in the pamphlet to be conspicuously published in each newspaper of general circulation in the relevant jurisdiction at least once during the thirty-day period before the election. The United States electoral administration shall cause the same pamphlet information for each initiative to be produced into interesting video and radio programs that are of at least thirty minutes duration. Each television and radio station licensed to broadcast in the relevant jurisdiction shall air the United States electoral administration-produced video and audio programs in prime time at least once during the thirty-day period before the election. The fair market value of printed materials, of newspaper publication, of video and radio production, and of broadcasting video and radio programs shall be paid to the appropriate parties by the issuance of vouchers redeemable as tax credits applicable to the federal income taxes of the appropriate parties, notwithstanding any other provision of law.

(13) DISCLOSURE. The principal sponsor and opponent of an initiative shall file disclosure statements with the United States electoral administration in which are listed identifying information to include the contributor name, employment, organizational affiliation if appropriate, and the amount of each donation greater than one hundred dollars. A disclosure report must accompany the filing of an initiative with the United States electoral administration detailing current and deferred contributions and expenditures to that date. Similar reports shall be filed sixty days and fifteen days prior to the date of the election, detailing contributions and expenditures up to the respective dates. The

fifteen-day report shall also project contributions and expenditures to election day. Initiative sponsors and opponents shall be prohibited during that last fifteen days before the election from soliciting or accepting contributions or making expenditures that are in the aggregate greater than five percent of the total amount contributed or spent to date, whichever is greater. A final report shall be due thirty days after the election detailing all contributions and expenditures in the campaign. Upon filing, the United States electoral administration shall immediately make all reports available to the public. Failure to file a report or an unwarranted delay in filing of the fifteen-day report so as to deny relevant information to the voting public before an election shall be a felony punishable by one year in prison or a fine not to exceed one hundred thousand dollars, or both, per instance, applied personally to each individual who is instrumental to the violation regardless of office.

(14) FUNDING. *Finding*: The manner of financing the presentation of an initiative and its supportive and opposing arguments is vital to public decision making in a democracy. The use of wealth concentrated in for-profit corporations and other business entities skews the electoral process on public policy issues. Corporations and business enterprises are repositories of the economic power of individuals and are generally operated autocratically for the benefit of their special interests. The financial resources at the disposal of for-profit corporations and other business entities are often used to articulate partisan political messages which obfuscate issues and persuade voters to make decisions contrary to their own interests. These practices are both unfair and unhealthy in a democracy.

Therefore, in an effort to level the playing field for initiative sponsors and opponents:

(a) The use of funds contributed: (i) From corporations or business entities operated for profit, or associations or committees backed by such entities, to finance the sponsorship or advocacy of an initiative or to finance the opposition to an initiative, or the use of such funds in any election conducted by the United States electoral administration, is prohibited. False disclosures and the fraudulent use of funds shall be a felony punishable by one year in prison or a fine not to exceed one hundred thousand dollars, or both, per instance, applied personally to each individual who is instrumental to the violation regardless of office; **(ii) From a person** is limited to a sum not to exceed one hundred dollars at the local level, five hundred dollars at the state level, and one thousand dollars at the federal level for initiative advocacy or opposition.

(b) Of funds contributed by a person for initiative advocacy or opposition, a sum not to exceed one hundred dollars at the local level, five hundred dollars at the state level, and one thousand dollars at the federal level shall be tax deductible for the income or other taxes imposed in those respective and relevant jurisdictions of government, notwithstanding any other provision of law.

NEW SECTION: **Section 6. A WORLD MEETING.** A world meeting shall be convened when a sufficient number of people world-wide have expressed their willingness, through democratically conducted initiative or referendum elections, to participate in a world meeting. Delegates to the world meeting shall be democratically elected by the people of the nation they are chosen to represent. In this act, unless the context clearly requires otherwise, ''nation'' means people of the nation.

(1) CRITICAL MASS. A sufficient number of people, a critical mass, shall be at least one billion people who reside in nations representing at least twenty-five percent of the

world's gross economic product. The attainment of the critical mass triggers the call to convene the world meeting.

(2) THE CALL. The call to the world meeting shall be formally communicated to the electoral administration of each participating nation by a world meeting secretariat, created in Section 7 of this act. The call shall announce the time and place of the meeting, and the probable number of delegates to be authorized each participating nation.

(a) Time. The meeting shall convene not less than twenty-four months nor more than thirty months from the date of the issuance of the formal call.

(b) Place. The world meeting secretariat shall arrange for a suitable location for the world meeting.

(c) Roll. During the first year after the call, the people of nations not yet participating may express their willingness to participate in the world meeting by initiative or referendum election certified by the world meeting secretariat to have been democratically conducted. At the end of that first year, the roll of nations authorized to participate in the world meeting shall be closed. Citizens of nations who did not vote to participate prior to the roll closure may send accredited observers to the world meeting.

(d) Delegate apportionment. The world meeting secretariat, within thirty days of the roll closure, shall communicate to the electoral administration of each participating nation the number of delegates authorized to represent the people of that nation, a number determined by the formula detailed in this section as applied to the most recent United Nations or other pertinent data.

(3) DELEGATES. The people who choose to participate in the world meeting shall be represented by an even number of national delegates, half of whom shall be male and half female.

(a) Qualifications. Delegates must be at least twenty-one years of age and legal citizens of the nation whose people they are elected to represent.

(b) Election. Delegates are to be chosen directly by the citizens of participating nations in plurality type elections. Each electoral administration shall establish rules and procedures for candidates and for the conduct of delegate elections. Electoral administrations shall be guided by the requirements and procedures detailed in this act, the practices in their nation, and the practices of other electoral administrations, toward the objective of making delegate elections universally democratic and equitable. In each nation the result of the election shall be a list of candidates in descending order according to the number of votes received. Selections will be made from the list in accordance with the rule stated in (c) of this subsection until the desired or authorized number of delegate positions shall have been filled.

(c) Gender equalization. The person receiving the largest number of votes shall be selected to fill the first delegate position. The second delegate position shall be filled by selection of the person who received the largest number of votes and who is of the opposite gender from the first person. Additional authorized delegate positions shall be filled in turn by alternately selecting the male or female candidate not yet selected who received the next largest number of votes, and so on. Accordingly, the delegates filling the third and succeeding oddnumbered positions shall be of the same gender as the person first selected. Those filling the evennumbered positions shall be of the opposite gender. A nation that chooses to elect and send fewer than the maximum number of authorized delegates shall send an even number of delegates who shall be evenly balanced between men and women.

(d) Representation. *Finding*: A world meeting with representation based solely on the number of inhabitants in nation-states could result in the world meeting being dominated by the delegates of a few or the world's most populous nations. This would discourage the participation of people from small and moderate-sized nations.

Therefore: In order to mitigate the effect of population taken alone as the basis for the allocation of delegates to nations, the maximum number of delegates authorized to the people of each participating nation shall be determined by this formula:

$$\textit{Delegates} = \textit{Primary Allocation} + \sum_{\textit{for all factors}} \textit{Performance Factor} \times \textit{Factor Weight}$$

(i) The primary allocation is the population-based starting point from which will be determined the number of delegates authorized for a nation. Because of the wide range of the populations of nations, a logarithmic function shall be used to equitably distribute delegates to nations. The logarithm shall be taken on the population, expressed in millions. To arrive at a suitable number of delegates for every nation with a population greater than two million, that result shall be multiplied by four. After factors adjustment, the result will be rounded to the nearest even number. To avoid computational anomalies, the logarithmic function shall not be used for nations with populations less than two million. Of these nations, those with populations greater than one million shall be authorized two delegates as their primary allocation. Each nation with a population of one million or less shall be assigned a primary allocation of zero, and that nation shall be expected to join in a regionally defined aggregate with one or more designated other nations of one million or less population. The aggregate population of the group shall then be used to calculate a primary allocation for the group as above; except that the primary allocation for

the group will be no less than two, even if the aggregate population of the group does not exceed one million. Therefore, with the provisos mentioned, the primary allocation computation shall be:

$$Primary\ Allocation = 4 \times Log_8(Pop)$$

(ii) Each performance factor shall use measurement of one of thirteen areas of national or governmental performance to adjust the primary allocation of each nation. Each factor, considering all nations, is represented by data, measured or estimated, that lies in a reported range from highest to lowest for the world. The data measures performance that will lie in a range representing best to worst performance. Within that range, a level of performance is picked to represent what reasonable people currently expect as the norm for every nation's performance with regard to respect for human beings and support of environmental safeguards. The difference between the actual performance of a particular nation and the norm, when compared to the range for the factor, will produce a ratio which is then used to calculate a positive or negative increment to be applied to the primary allocation of that nation. Whether an increment is positive or negative is determined by what reasonable people would consider better with regard to the factor in question. A nation may suffer a performance factor penalty as large or larger than its primary allocation. In that case its final delegate allocation shall be not less than two. For two of the factors, currently available data representing the actual range of national performance discloses performance so egregious in a civilized world that the actual range is rejected and replaced with one more representative of human expectation. These two factors are military expenditures as a percentage of spending for health and education combined and maternal mortality. The effect of this modification is to make increments on the primary allocation of delegates for

those two factors larger for all nations than they would be if the true ranges were used. At the time the call for the meeting is used, performance data used shall be that which is more current. It will be a responsibility of the world meeting secretariat to determine the expectations of reasonable people in announcing acceptable ranges of current data and expected norms to be used in the calculation as well as whether higher or lower performance measures are better. The performance factor computation follows:

$$Performance\ Factor = \pm\ Primary\ Allocation \times (Norm - Performance) \div FactorRange$$

The data base used in delegate allocation shall be the latest available from the United Nations Development Programme, Human Development Report Office, 336 E. 45th Street, Uganda House, 6th Floor, New York 10017; (212) 983-1530, Fax (212) 983-0025; or other appropriate source. The performance factors are these:

Short Title	*Description*
Human Rights Index	A formulation of 40 indicators of human rights reported as a "Human Freedom Index" by the UN.
Maternal Mortality	Maternal deaths at or near childbirth per 100,000 live births.
Mean Years of Schooling	For total population above 25 years of age.
Fertility	Expected number of live births per woman's lifetime.
Gender Equality in Labor	Women in workforce as a percentage of total workforce.
Greenhouse Effect	Emission of "carbon dioxide equivalents" expressed as metric tons per capita.

Short Title	*Description*
Social Security Spending	Measured as a percentage of Gross Domestic Product.
Hazardous Waste Generation	Measured as metric tons per square kilometer of land mass.
Military Expenditures	Measured as a percentage of Health and Education Expenditures.
Gross Domestic Savings	Measured as a percentage of Gross Domestic Product.
Gross National Product	Per Capita, measured in U.S. dollars.
Human Development Index	An index emphasized in the UN Human Development Report.
Media Outlets	Number of radios, television sets and daily newspapers per 1,000 people.

The performance factor ranges, their norms and weights, given currently available data are as follows:

Short Title	*"High for the world"*	*"Low for the world"*	*"Norm"*	*"Better"*	*Relative Weight*
Human Rights Index	38	0	28	Higher	20
Maternal Mortality	200	2	10	Lower	15
Mean Years of Schooling	13	0.1	9	Higher	12
Fertility	8.5	1.3	2	Lower	10
Gender Equality in Labor	49	4	40	Higher	10
Greenhouse Effect	12.4	0.1	3	Lower	10
Social Security Spending	33.7	0	15	Higher	10
Hazardous Waste Generation	76.7	0	0	Lower	8
Military Expenditures	66	4	12	Lower	8
Gross Domestic Savings	45	-41	20	Higher	5
Gross Domestic Product	32250	80	20000	Higher	5
Human Development Index	0.983	0.045	0.850	Higher	5
Media Outlets	3188	30	2000	Higher	4

(iii) Factor weight is the relative importance given to each of the thirteen factors. These weights may be modified by the world meeting secretariat if three-fourths of the sitting members of the board are in agreement.

Example: A monograph that contains all available data which would be used to calculate the number of delegates authorized for each nation if the meeting had already been called, together with an elaboration of how the formula would be applied to five different nations, is available from: Philadelphia II, 3216 South Tacoma Way, Tacoma, Washington 98409 USA.

(e) Campaign funding. Candidates for the position of delegate to the world meeting shall not solicit nor accept funds from government agencies, from for-profit corporations or business enterprises, or from organized associations backed by such entities, to pay for any costs associated directly or indirectly with seeking election as delegate. Each electoral administration shall develop procedures and regulations similar to those in this chapter for initiatives to govern the conduct and reporting of delegate campaigns.

(f) Vacancies. A vacancy in any delegation shall be filled with minimum delay by the person who received the next largest number of votes in the original election and who is of the same sex as the person creating the vacancy.

(4) WORLD MEETING FUNDING. There shall be appropriated from the treasury of each participating nation the funding necessary to pay the costs of its delegates and their proportionate share of the costs of the operation of the world meeting. A proportionate share shall be determined by the percentage of a nation's delegates to the entire number of delegates participating in the world meeting.

NEW SECTION: **Section 7. WORLD MEETING SECRETARIAT.** A world meeting secretariat is hereby

created to perform the necessary ministerial functions in preparation for the world meeting.

(1) ORGANIZATION. The secretariat shall be governed by a board of directors consisting of one person from the board of the electoral administration of each participating nation, plus the secretary general of the United Nations, who shall be an ex officio voting member. The secretariat shall come into being when the boards of at least two electoral administrations come into being and appoint their authorized members. The secretariat shall organize itself in a fashion similar to that of the electoral administrations.

(2) MINISTERIAL DUTIES. The secretariat shall perform essentially ministerial duties; however, in the absence of defined powers to deal properly with unforeseen requirements or other events in preparation for the world meeting and the apportionment of delegates, the secretariat shall be authorized to take the actions necessary to fulfill the intent of Philadelphia II, after consultation with the electoral administrations of participating nations.

(a) Certification. The secretariat shall monitor, investigate, and subsequently certify or disallow all initiatives, referenda, and delegate elections relating to the world meeting on the basis of their having been fairly and democratically conducted.

(b) Formal call. The secretariat shall issue the formal written call to convene the world meeting to the electoral administration of each participating nation.

(c) Preparations. The secretariat shall provide for the necessary meeting and office space for the efficient conduct of the world meeting. It shall contract for unbiased studies on subjects likely to be of use in the world meeting and hire staff to serve the anticipated needs of the world meeting.

(d) Fiduciary. The secretariat shall prepare budgets of anticipated expenses; apply for, receive, spend, and account for all funds and in-kind contributions in a manner that meets appropriate standards and which is open to public scrutiny; and transfer all funds, property, records, and staff to the world meeting upon its organization.

(3) FUNDING. Funding for the secretariat shall be provided by the electoral administrations of participating nations in amounts equal to the percentages of their expected number of delegates to the entire number of delegates to the world meeting.

NEW SECTION: **Section 8. SEVERABILITY.** In the event any section of this act is deemed to be unconstitutional, all other sections shall remain legally in force.

NEW SECTION: **Section 9. COOPERATION.** All governmental jurisdictions shall cooperate to the fullest extent possible to facilitate the exercise of the people's sovereign right to establish direct democracy in partnership with representative democracy.

NEW SECTION: **Section 10. TERM.** Commencing from the date that the Philadelphia II initiative is first approved by a majority of voters in the state of Washington, voters in other states shall have ten years to approve or disapprove of the Philadelphia II initiative. If Philadelphia II has not become a law of the United States within ten years of the date it is approved in the state of Washington, this act as it exists in the state of Washington and any other state shall be null and void.

NEW SECTION: **Section 11. EFFECTIVE DATE.** This act shall be effective upon approval as provided in the state Constitution. When a majority of voters voting in the United States enact Philadelphia II it shall become a law of the United States and shall be added to the federal code in the

appropriate manner. The text of Philadelphia II shall be deleted from state codes as the corresponding text is added to the federal code.

NEW SECTION: **Section 12. Sections 1 through 11** of this act shall constitute a new chapter in Title 29 RCW.

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APPENDIX D

[Seal of the State of Washington]

Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON
905 Plum Street Bldg 3 • PO Box 40100 • Olympia WA 98504-0100

January 26, 1995

The Honorable Ralph Munro
Secretary of State
PO Box 40220
Olympia, WA 98504-0220

ATTN: V. Jean Womer, Initiative Coordinator

Re: Initiative No. 641, Philadelphia II

Dear Mr. Munro:

On January 19, 1995, pursuant to statute, you transmitted to us a copy of proposed Initiative Measure 641 with a request that we supply a ballot title and explanatory statement. We have reviewed the proposed initiative and decline to supply a title for the reason that the contents of the measure are beyond the legislative power reserved to the people under the Washington State Constitution.

Article 2, section 1, of the state constitution provides that "[t]he legislative authority of the state of Washington shall be vested in the legislature . . . but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature. . . ." From the wording of this language, it is clear that the power of the initiative in this state is a reserved category (perhaps equal to, and certainly no greater than) "the legislative authority of the state of Washington". Our Supreme Court has held that the initiative may not be used for "nonlegislative" matters. *Ford v. Logan*, 79 Wn.2d

147, 483 P.2d 1247 (1971). Consistent with these principles, our office has consistently declined to process, and has advised your office likewise to decline to process, proposals which are beyond the legislative authority of the state. Examples we have encountered in the past are proposed initiatives which would amend the state or federal constitutions, or amend federal statutes, or alter treaties to which the United States is a party, or proposed measures which seek to "make a statement" or serve as a petition to Congress on a matter of federal law. All of these matters are beyond the power of initiative because they are not legislative in nature.

We have carefully examined proposed Initiative Measure 641 and can find in it no provisions which would, if enacted, constitute state legislation. The proposal contains 12 sections, of which sections 1, 8, 9, 10, 11, and 12 are purely mechanical or procedural. Section 2 is a preamble which, read together with the rest of the proposal, makes it clear that the aim of the proposal is to amend federal law to institute "direct democracy". Section 3 is merely a declaration of the philosophy behind the measure, again expressing a desire to establish "direct democracy" at the national and international levels, and citing various historical precedents. While this kind of material sometimes appears in initiative measures and in legislative bills and is occasionally used by courts to divine legislative intent, such language alters and establishes no rights or responsibilities and is not legislative in nature.

Section 4 of the proposal would create a "United States Electoral Administration". While an initiative could certainly be used to create a new state agency, nothing in the name or functions of the proposed "electoral administration" would make the administration an agency of the state of Washington. The name of the agency implies that its scope of operations is federal, and this fact is confirmed by the duties ascribed to it. The directors of the proposed adminis-

tration would not be chosen by, or in any sense responsible to, the government of the state of Washington, nor are they assigned any duty to administer or enforce the laws of the state. Subsection (3)(a) of the proposal would appropriate approximately $2.5 million to the administration ". . . as a loan." However, subsection (3)(b) makes it clear that state funds would be used only temporarily until the proposal is enacted into federal law, at which time all state appropriations would be repaid. This makes it clear that the "electoral administration" is conceptualized as a federal and not a state agency. We are aware of no credible legal theory under which state legislation could effectively create a federal agency, or alter federal law.

Section 5 of the proposal purports to define the term "citizen initiatives" in some detail, with provisions limiting the subject matter of such initiatives, provisions limiting the length, and provisions describing how such measures will reach the ballot. To the extent the proposal seeks to establish or alter the nature of the initiative power in other states, or in the United States, it is ineffective because the legislative power of the state of Washington does not extent to other jurisdictions.[1]

Sections 6 and 7 of the proposal would call for the convening of a "world meeting", adopt (in some considerable detail) procedures for the conduct of such a meeting, and establish a "world meeting secretariat". The constitution and laws of Washington nowhere assert the authority to establish international organizations, or to legislate concerning international matters. Indeed, such legislation appears to

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[1] This section is not specifically directed at the initiative power in the state of Washington. To change the requirements of article 2, section 1, would require an amendment to the constitution, which cannot be achieved with an initiative.

be beyond the authority of the state as inconsistent with the powers assigned to Congress in article 1, section 8, of the United States Constitution, and to the treaty power assigned to the President in article 2, section 2. Article 1, section 10, specifically prohibits the states from entering into any ". . . treaty, alliance, or confederation . . . ."

To summarize, proposed Initiative Measure 641 is not intended to change or add to Washington State law measures which are within the legislative power of the state. (Indeed, section 11 of the proposal would provide that the measure would be deleted from the state codes as soon as it is added to the federal codes). The focus on this initiative is on establishing "direct democracy" at the national and world levels. Whatever the merits of such a goal, it is unrelated to the legislative power of the state of Washington.[2]

Accordingly, we decline to provide a ballot title or explanatory statement for proposed Initiative Measure 641, and advise you likewise to decline to process this proposal.

Very truly yours,

/s/ James K. Pharris
JAMES K. PHARRIS
Senior Assistant Attorney General
(360) 664-3027

JKP/bw
cc: Narda Pierce

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[2] We are also unaware of any credible legal authority for the proposition (expressed or implied in several parts of the proposal) that "the people" have some source of initiative power other than the constitution or laws of the state.